Supreme Court, U.S.
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No. 90-1522

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

640 BROADWAY RENAISSANCE COMPANY,
Debtor in Possession, Petitioner,

-v.-

MARIO CUOMO, as Governor of the State of New York, et al.,
Respondents,

-and-

PHOEBE RENTSCHLER, et al.,
Defendants.

BRIEF OF MUNICIPAL RESPONDENTS IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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April 25, 1991.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Was petitioner's challenge to the constitutionality of Article 7-C of the New York State Multiple Dwelling Law, §§ 280 et seq. (the "Loft Law"), under the Due Process and Equal Protection clauses of the Fourteenth Amendment, the Taking Clause of the Fifth and Fourteenth Amendments, and the Contract Clause of Article I, Section 10, properly dismissed on the ground that this Court's decision in Spring Realty Co. v. New York City Loft Board, 127 Misc.2d 1090, 487 NYS2d 973 (Sup. Ct. NY Co. 1985), aff'd, 117 AD2d 1029, 498 NYS2d 241 (1st Dep't), aff'd as modified on other grounds, 69 NY2d 657, 803 NE2d 1367, 511 NYS2d 830 (1986), appeal dismissed for want of a substantial federal question, 482 US 911 , 107 SCt 3179, 96 (LEd 2d 668 (1987), decided those same issues against the position taken by petitioner herein?

2. Was petitioner's challenge to the legislation in issue on the ground that it

constituted a bill of attainder properly dismissed as a matter of law since there was no evidence of legislative intent to punish?

3. Was petitioner's challenge to the legislation in issue on the ground that it violated petitioner's "vested rights" properly dismissed as a matter of law since a property owner has no vested right to the continuation of extant zoning law?

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STATEMENT OF THE CASE

The instant petition seeks review of a Court of Appeals order, in the form of a mandate, affirming the dismissal of petitioner's complaint, which alleged various challenges to the constitutionality of Article

7-C of the New York State Multiple Dwelling Law, §§ 280 et seq. (McKinney Supp. 1990) (the "Loft Law"). By a judgment of July 31, 1990, the District Court for the Southern District of New York granted summary judgment in favor of defendants Cuomo, Koch, and members of the New York City Loft Board. By order of January 2, 1991, the United States Court of Appeals for the Second Circuit unanimously affirmed the judgment of the District Court, on the ground that the majority of the claims were barred under the ruling of Spring Realty Co. v. New York City Loft Board, 127 Misc.2d 1090, 487 NYS2d 973 (Sup. Ct. NY Co. 1985), aff'd, 117 AD2d 1029, 498 NYS2d 241 (1st Dep't), aff'd as modified on other grounds, 69 NY2d 657, 503 NE2d 1367, 511 NYS2d 830 (1986), appeal dismissed for want of a substantial federal question, 482 US 911, 107 SCt. 3179, 96 LEd 2d 668 (1987) ("Spring Realty"); and the remaining claims

(bill of attainder and "vested rights") were without merit as a matter of law.

REASONS FOR DENYING THE WRIT

As expressed by the Court of Appeals, petitioner herein "presents a host of challenges to the constitutionality of Article 7-C of the New York State Multiple Dwelling Law, §§ 280 et seq." (the "Loft Law"). When petitioner's property at 640 Broadway in the City of New York was designated as covered by certain provisions of the Loft Law, petitioner brought suit seeking declaratory and injunctive relief invalidating the Loft Law and an award of three million dollars in damages from the government defendants.

In response to this challenge, the government defendants sought dismissal of the complaint on the ground that the majority of the claims had been disposed of by this Court in Spring Realty Co. v. New York City Loft Board, 127 Misc.2d 1090, 487

NYS2d 973 (Sup. Ct. NY Co. 1985), aff'd, 117 AD2d 1029, 498 NYS2d 241 (1st Dep't), aff'd as modified on other grounds, 69 NY2d 657, 503 NE2d 1367, 511 NYS2d 830 (1986), appeal dismissed for want of a substantial federal question, 482 US 911, 107 SCt 3179, 96 LEd 2d 668 (1987).

The District Court for the Southern District of New York agreed that the majority of petitioner's claims had been decided against petitioner's position, in Spring Realty. The Court of Appeals agreed, holding that

> The Supreme Court's dismissal of a prior challenge to the Loft Law in Spring Realty Co. v. New York City Loft Board, 127 Misc.2d 1090, 487 N.Y.S.2d 973 (Sup. Ct. N.Y. Co. 1985), aff'd, 117 A.D.2d 1029, 498 N.Y.S.2d 241 (1st Dep't); aff'd as modified on other grounds, 69 N.Y.2d 657, 503 N.E.2d 1367, 511 N.Y.S.2d 830 (1986), appeal dismissed for want of a substantial federal question, 482 U.S. 911 (1987), bars the majority of [640] Broadway's constitutional claims. Once the Supreme Court has dismissed an appeal for want of a substantial federal question, we are bound to

> treat that decision as rejecting on the merits those issues presented in the jurisdictional statement and necessarily decided. See Mandel v. Bradley, 432 U.S. 173 (1977) (per curiam); League of Women Voters v. Nassau County Board of Supervisors, 737 F.2d 155 (2d Cir. 1984), cert. denied sub nom. Schmertz v. Nassau County Board of Supervisors, 469 U.S. 1108 (1985). Spring Realty precludes reconsideration of [640] Broadway's claims under the Due Process and Equal Protection clauses of the Fourteenth Amendment, the Takings Clause of the Fifth and Fourteenth amendments, and the Contract Clause of Article I, Section 10.

Petition for Certiorari, A1-A3.

Furthermore, the Court of Appeals held, the claims of the plaintiffs in Spring Realty were indeed ripe, rejecting petitioner's reading of that case. This Court's dismissal of the appeal in Spring Realty for want of a substantial federal question was, therefore, made on the merits. The claims presented by petitioner herein, on essentially the same grounds as were presented in Spring Realty, that is, challenges to the validity of the Loft Law on

a variety of constitutional grounds, were therefore properly dismissed as having been decided and rejected by this Court.

Only two issues raised by petitioner herein had not been considered by the courts in Spring Realty: that the Loft Law constituted a bill of attainder in violation of Article I, Section 10, and that the Loft Law impairs petitioner's "vested property right" in the commercial certificate of occupancy issued to the property before the enactment of the regulations in issue. As was held by the District Court, and affirmed by the Court of Appeals, those claims are without merit as a matter of law since, respectively, there is no evidence of legislative intent to punish (see Selective Service System v. Minnesota Public Interest Research Group, 468 US 841, 852, n.8, 104 S Ct 3348, 82 LEd 2d 632 (1984); nor does a property owner acquire a vested right to the status quo where, by the exercise of police power, the

State imposes additional or new requirements with respect to the use of such property (see Oriental Boulevard Co. v. Heller, 88 Misc.2d 920, 928-929, 297 NYS2d 431, 441 (Sup. Ct. Kings Co. 1969), modified on other grounds and aff'd as modified, 34 AD2d 811, 311 NYS2d 635 (2d Dep't), aff'd, 27 NY2d 212, 316 NYS2d 226, 265 NE2d 72 (1970), appeal dismissed for want of a substantial federal question, 401 US 986, 91 S Ct 1234, 28 LEd 2d 527 (1971)).

The District Court, as affirmed by the Court of Appeals, correctly determined that petitioner's due process, equal protection, Contract Clause, and takings claims were previously presented to and adjudicated by both the New York State courts and this Court and further that there were neither significant factual distinctions between the plaintiff in Spring Realty and petitioner herein, nor had there been any doctrinal developments undermining Spring Realty.

The courts below also correctly determined that the bill of attainder and "vested rights" arguments were without merit as a matter of law. The Courts below therefore correctly determined that the entire complaint should be dismissed.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

April 25, 1991.

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